



Final Report of the Post-Croson Project

by William L. Wilson

A study funded by the St. Paul Companies, Ramsey County, the City of St. Paul, Independent School District #625, and the St. Paul Port Authority with research contributions from BBC Research and Consulting and the University of Minnesota Law School's Institute on Race and Poverty.

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CURA RESOURCE COLLECTION

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December 1997

CURA has supported the work of the author of this report but has not reviewed it for final publication. Its content is solely the responsibility of the author and is not necessarily endorsed by CURA.

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PURPOSE

The purpose of the Post-Croson Project is twofold: First, to conduct a survey of cities that have conducted disparity studies as a result of the U.S. Supreme Court *Croson* decision in order to identify and assess the key program elements contained in those studies that are essential in the establishment of any successful MWBE (Minority and Women Business Enterprise) program and to recommend that these program elements be included in any MWBE programs that may be developed following the completion of area disparity studies. Second, to facilitate conducting a multijurisdictional disparity study to determine whether there is sufficient basis to institute corrective action MWBE programs in Ramsey County, the City of St. Paul, and Independent School District (ISD) #625.

The information gathered through the Post-Croson Project will help develop public policy directions and will describe disparity studies' research methodologies for communities wishing to implement MWBE programs that are both legal and effective in addressing the development needs of MWBE. This information may also be useful in establishing the framework for such programs.

The Post-Croson Project was funded in October 1993 by the St. Paul Companies at which time Bill Wilson, the principal investigator, served as chairperson of the Twin Cities Multijurisdictional Disparity Board (TCMDB). Mr. Wilson began working on the project in February 1994 following his retirement from the St. Paul City Council. The idea of doing the Post-Croson Project was stimulated by his work with TCMDB (established in early 1993) to conduct a disparity study in the Twin Cities so that the legal obligations for establishing and re-establishing MWBE programs could be met. He was elected Chairman of the Board and provided the essential and necessary leadership to guide the board through completion of the Post-Croson Project. In addition to Wilson, the Board was composed of two elected representatives from each of the participating jurisdictions: Hennepin County, the City of Minneapolis, Minneapolis Public Housing Agency, Ramsey County, the City of St. Paul, Independent School District (ISD) #625, and the St. Paul Port Authority. The major responsibilities of TCMDB were to raise funds to support the study, to solicit proposals for implementation of the study from potential consultants through the "Request For Proposal" process, to hire a consultant, and to oversee the study's prog-

ress. It was felt that information gained through the Post-Croson Project could help guide the development of effective MWBE programs that could result from the Twin Cities' disparity studies.

During preparation of the "Request For Proposal," Hennepin County, the City of Minneapolis, and the Minneapolis Public Housing Agency elected to conduct their study independent of the St. Paul/Ramsey County jurisdictions. Consequently, the Minneapolis/Hennepin County group and the St. Paul/Ramsey County group (including ISD #625) separately conducted national searches for a consulting firm experienced with multijurisdictional disparity studies. Surprisingly, and fortunately, both groups selected the same firm, BBC Research and Consulting, to perform their studies. For purposes of this study, the Ramsey County, City of St. Paul, and ISD #625 group was named the "Disparity Study Joint Powers Board."

The Twin Cities participating jurisdictions allocated a total of \$699,680 for the two studies: \$481,353 by the Minneapolis/Hennepin County group and \$218,327 by the St. Paul/Ramsey County group. When considering funding, it is worth noting that it has been no small achievement, especially during this period of tight budgets, to persuade these separate public bodies to collectively invest this level of funding into a civil rights initiative affecting the economic well-being of their constituents.

OBJECTIVES

The Post-Croson Project has five objectives:

1. To collect and analyze post-Croson disparity studies data from communities that have reestablished MWBE programs.
2. To foster the idea of using an interdisciplinary approach in the Twin Cities disparity studies that includes students and faculty from the University of Minnesota's Humphrey Institute of Public Affairs, Carlson School of Management, and Law School so that an academic and public policy understanding of MWBE programs can be pursued.
3. To develop a means of building consensus among public policy decision-makers about the need for such programs and of educating the general public about the fairness of such programs.

4. To develop a series of seminars or workshops for information sharing among those who are currently operating programs and those who are interested in setting up programs.
5. To facilitate conducting a multijurisdictional disparity study.

BACKGROUND

Prior to 1989, approximately 234 public jurisdictions had some version of a Minority and Women Business Enterprise (MWBE) program. However, in 1989 a lawsuit was initiated by Croson Company against the City of Richmond, Virginia, which operated a program that set aside at least 30 percent of all contracts for minority business enterprises. The U.S. Supreme Court found that Richmond's program was in violation of the Equal Protection Clause of the 14th Amendment. Subsequently, most public jurisdictions across the country almost unilaterally abandoned their MWBE programs to avoid potential lawsuits. However, these actions were premature when considering that the court decision made it quite clear that public jurisdictions do have the authority to address identified discriminatory practices that exist within their jurisdictions and, moreover, that a municipality has a *compelling interest* in remedying discrimination, including the use of race-conscious remedies.

However, when a jurisdiction institutes a race-conscious program or preference program, it must meet three standards: 1) the remedies must pass the judicial test of strict scrutiny, which includes a showing of compelling government interest, 2) the remedies must be narrowly tailored, and 3) the program must be limited to the geographical boundaries of the enacting jurisdiction. Further guidance can be taken from *Croson*, where the court allows that an inference of discrimination can be asserted when there is significant disparity between the number of able, willing minority contractors receiving contracts and the number of contracts awarded by the jurisdiction. And furthermore, when a disparity exists, there does not have to be a showing of *de facto* discrimination but instead only a *prima facie* showing is required, particularly when taken in combination with anecdotal and historical evidence disclosing a pattern and practice of discriminatory effects. Based on these types of guidelines as set out by the courts, a number of jurisdictions began initiating disparity studies in order to establish a legal foundation for MWBE programs.

METHODOLOGIES USED IN THE DISPARITY STUDIES

The Post-Croson Project has focused on collecting and analyzing four disparity studies initiated by the jurisdictions of New York City; Seattle, Washington; Maricopa County, Arizona; and Phoenix, Arizona. Site visits were used in each analysis, and all four of the disparity studies followed a similar methodology which, in general, included:

- an examination of contracts and purchase orders issued and paid by city agencies during a fixed period,
- an examination of the utilization of minority and women sub-contractors,
- an analysis of procurement practices,
- an evaluation of census data on the availability of qualified MWBE programs which could reasonably supply goods and services,
- an examination of surveys and interviews with minority and women business owners, and
- an evaluation of testimony taken at public hearings.

FINDINGS OF THE DISPARITY STUDIES

The New York City Disparity Study revealed that qualified MWBEs received a significantly smaller share of contract dollars spent by the city than would reasonably be expected based on their general availability in the market area from which New York City agencies make purchases of goods and services. Disparities were shown to have occurred among all major racial, gender, and ethnic groups including African Americans, Asians, Hispanics, American Indians, and women across the major industries, commodities, construction, and personal and professional services. For example, in terms of dollars received based on what would be expected, African Americans received only 17 cents of every dollar expected as construction contractors; Asians received only 30 cents of every dollar expected as professional contractors; and Hispanics received only 55 cents of every dollar expected for commodity purchases. Women received only 21 cents on the dollar in construction, 34 cents on commodities, and 15 cents on the dollar for professional and personal services. Overall, qualified minority- and

women-owned businesses received substantially fewer projects and a smaller share of procurement dollars than would be expected based on their availability.(1)

Unfortunately, contract data for Phoenix was so poorly maintained it was very difficult to accurately document the city's utilization of minority- and women-owned businesses. But from the records which could be compiled and analyzed, statistically significant disparities were shown. Disparities were also shown in the rate of business formation—with minority businesses being formed at approximately one-eighth the rate of white-owned businesses. In addition, an indication of disparity was shown in a sample of the City's purchasing record from 1987 through 1993; these records showed that the average utilization of qualified minority business enterprises during this period was 1.79 percent in comparison to an availability of 5.8 percent as determined by U.S. Census data. Similarly, utilization of women-owned businesses for the same period was 1.85 percent as compared to an availability of 28 percent.(2) Similar results were found through an examination of Maricopa County records. Although there was quite a deficiency of records for Phoenix and Maricopa County, there were enough data to show a definite underutilization pattern of MWBEs. Based on these statistical disparities coupled with anecdotal testimony from affected minority and women business owners, a sufficient showing was made for the establishment of MWBE programs in the City of Phoenix and in Maricopa County.(3)

The Seattle Disparity Study also showed significant underutilization of minority- and women-owned businesses. Although the availability of qualified minority businesses in the larger Seattle area was 6.8 percent, the city only contracted with these businesses at a 3 percent level—or less than half of what would be reasonably expected. A similar pattern was shown for women-owned businesses, except the disparity was even greater. The availability of qualified women-owned businesses was 9.6 percent, yet their utilization was 1 percent—or roughly 20 percent of what would be expected in a non-discriminatory environment. And as the *Croson* decision provides, the combination of disparate effects and supportive anecdotal testimony can become the basis for a corrective action of MWBE programs.(4)

ANALYSIS AND EVALUATION

In order for a MWBE or corrective action program to withstand a *Croson* challenge, the disparities data must be drawn from and applied to a specific contracting activity such as con-

struction contracts. An examination of the disparity studies used in this project showed that construction contracts registered some of the highest levels of disparities and patterns of pervasive discrimination. It is, therefore, important to take a close look into the construction industry because along with its pervasive discrimination, it also provides potentially one of the best avenues for minority- and women-owned businesses to access market opportunities. There are many nuances in the construction industry which distinguish it from other industries.

For example, construction firms draw their primary workforce from unions and through hiring halls—unlike most businesses which maintain an internal workforce. In addition, these hiring halls are maintained by craft unions that regulate the available workforce. The workforce is further controlled by unions that operate unique training or apprenticeship programs over which they exercise a great deal of authority. For example, entrance into an apprenticeship program relies heavily on subjective factors such as personal relationships, family ties, and fixed-term indentures. These factors, when taken as a whole, tend to significantly reduce access into the craft trades for minorities and women. And since most construction businesses are formed by individuals who have themselves had successful apprenticeship and journeymen experiences, lack of access to the building trades correspondingly reduces the potential formation of minority- and women-owned construction businesses.

Long-term relationships between large and small construction businesses appear to be the glue which holds the construction industry together, beginning with small firms repeatedly subcontracting with large, more established firms. And over time, the successful smaller firms develop into the large successful prime contractor firms which continue the process of incubating and promoting other small firms. Interestingly, this process of business development and evolution in the construction industry mirrors a type of “indentureship” found in the apprenticeable trades in that both are heavily reliant on personal relationships developed over time that function as a sort of proving ground. As was suggested earlier, this type of “indentureship process” often works against women and minority firms because they tend to be both excluded and treated with a degree of skepticism by larger majority contractors, thus creating barriers to building the type of trust necessary for developing long-term businesses relationships.

Another feature of the construction industry that creates a significant barrier to MWBEs is the requirement of security bonds for construction projects. The Phoenix and Maricopa studies

reported significantly large disparities for all racial/ethnic groups and women contractors.(2,3) And not surprisingly, these two jurisdictions also had, by far, the most restrictive and inflexible bid bond requirements. For example, they required that every sealed bid had to include a bond or certified check covering 5 percent of the project cost—which had the effect of pricing many minority- and women-owned businesses out of the bidding process.

KEY PROGRAM ELEMENTS

Well-thought-out changes in *bonding* requirements can increase MWBE participation without sacrificing quality. In one example, Maricopa County, which prior to their disparity study required a bond with every bid, subsequently changed its rules and substituted a “good faith effort” requirement. The “good faith effort” provision in essence allows that for each contract requiring a bid bond, the prime contractor is required to show what “good faith effort” was made to assist a MWBE subcontractor in securing a bid bond. Based on this approach, preliminary reports suggest that prime contractors, on a case-by-case basis, began requiring fewer bonds from subcontractors, which in turn contributed to a significant increase in utilization of MWBEs in Maricopa County construction projects. Although the Maricopa County results are encouraging, experience has shown that “good faith efforts” alone are not an effective barrier to discrimination over the long-term because to be effective, “good faith” programs must be reinforced by a reliable enforcement program.

A bonding study done in conjunction with the New York Disparity Study raised some interesting issues about bonding requirements and sheds some light on the need for coupling MWBE bonding training processes with financing and bond pooling programs. (5) The study involved a survey of New York City construction contractors who worked both private and public contracts, and there were a number of interesting findings. One, for example, was that a significant number of large and small contractors simply do not bid on jobs that require bid bonds. Their reasoning is that bonds are unnecessary and require too much paper and time for their limited value. Interestingly, of the firms that did not seek bonds but performed on contracts, 95.7 percent of them reported that they have never defaulted on a job. And by comparison, of the firms that were bonded and performed on city jobs, 96.3 percent likewise reported that they have not defaulted on a job—a 0.6 percent difference. The very small

difference in the reported failure rate between bonded and unbonded construction contractors certainly raised some interesting questions regarding perceptions held about bonding requirements. Certainly these results do not suggest that bonds are totally unnecessary because, arguably, bond requirements would screen out some contractors who simply could not perform. Alternatively, the results support the finding that rigid requirements, as also demonstrated in the Maricopa County program, can unfairly screen out firms that have the potential and capability of successfully performing on a contract but may simply lack the experience necessary to satisfy a bonding company.

Another area of major concern of MWBEs is the general lack of *uniform enforcement* by public jurisdictions of the programs they have established. It is generally accepted that without attention to enforcement, the programs become rather ineffective. And minority and women business owners increasingly have found themselves having to become aggressive advocates for addressing the enforcement failures of a program which can, in effect, put them in direct conflict with the very businesses and people with whom they need to develop networking relationships. Clearly, the more responsibility jurisdictions assume for legally maintaining and enforcing their MWBE programs, the more attention women and minority business owners can give to successfully operating their businesses. Another argument for an effectively enforceable program is that MWBE programs will be seen by the broader business community as a legal requirement rather than a social statement which, in turn, reduces the likelihood of minority- and women-owned businesses being thought of as "affirmative action businesses or tokens." It was this type of stereotyping that representatives of MWBEs most frequently complained about in public hearings held by the five jurisdictions that were analyzed (see page 5). An example of this type of thinking was reported by a Hispanic owner of a construction firm who was frequently mistaken for a person of European origin.⁽¹⁾ He testified during a disparity study hearing in New York City that he often heard comments to the effect that "people can't trust minority and women businesses because they don't do good work and they are free loaders—here today, gone tomorrow"—in essence, affirmative action tokens.

Addressing issues of unfair discrimination and prejudices is, unmistakably, the legal responsibility of public jurisdictions. Although disparity studies do not typically examine the effectiveness of civil rights enforcement programs of the enacting jurisdiction, the programs

must, however, meet civil rights and anti-discrimination standards. The cities of New York, Cincinnati, and Seattle have long had civil rights ordinances and administrative enforcement agencies to protect their citizens against unfair discriminatory practices. Seattle, however, has taken a very interesting direction by linking the MWBE program directly to its civil rights enforcement agency through adoption of a MWBE utilization ordinance.(4) By doing so, Seattle elevated the MWBE program and its related activities to the level of a civil right and at the same time provided a legal mechanism for its enforcement.

A closer look at the ordinance shows that the human rights director is given broad powers to enforce the provisions of the MWBE program, which, as was discussed earlier, frees minority and women business owners from having to function as front line program advocates and, in turn, allows them the time to focus on operating their businesses as well as networking with other successful businesses. In addition, the human rights director is given the responsibility for educating the community about the benefits of the MWBE program—which should both lower the level of resentment for the program and open new opportunities for minority and women business owners. And finally, if it is determined that there is not compliance with provisions of the MWBE program, enforcement actions can be initiated.

Gaining access to *financing* is basic to the success of any small business and for minority- and women-owned businesses, access becomes an even greater problem, primarily because of the general unavailability of equity capital, limited reserves, and unfair discrimination. The problem of discrimination in lending is very pervasive and it disproportionately limits the ability of MWBEs to secure financing adequate to maintain and expand their businesses. For example, 25 percent of the persons interviewed in the New York Disparity Study reported that they had experienced some form of lending or credit discrimination during a two-year period.(1) Similar results were found in the other four reports. No evidence was uncovered to show that minority- and women-owned businesses managed capital any less capably than other similarly situated businesses, which therefore suggests that disparities in lending arise from an unwillingness of lending institutions to assess financing needs of MWBEs based on individual merit rather than the race or gender of the owners. This type of discrimination in financing or lending can be curbed by public jurisdictions restricting their deposits to only institutions that operate affirmative action lending programs.(6)

Clearly, the pervasive problem of discrimination in financing targeted at MWBEs should be addressed through a MWBE program. As suggested earlier, a first step would be to link fairness in financing to a jurisdiction's civil rights enforcement program. A second step would be to develop a coordinated "one stop" financing and assistance program geared to certified MWBEs and operated by the enacting jurisdiction. This "one stop" service should serve as a clearing-house for the variety of financing small business education and services available in the Twin Cities area.

Ongoing *education programs* for MWBEs certified by local enacting jurisdictions are essential in successful MWBE programs. This type of education will also help build consensus among public officials and community decision-makers as to the legal basis, fairness, and public purpose needs of MWBE programs. This becomes particularly important in view of the recent statewide referendum abolishing all affirmative action programs in California. The referendum stated that MWBE programs represent "special preference" or "special interest" programs—which unfairly take from some and give to other less deserving persons. This referendum could act as a rallying point for other states, and could result in creating a national theme of divisiveness. Of course what advocates of these referendums will not point out is that MWBE programs must be established based on strict standards set by the U.S. Supreme Court in the *Croson* decision. Given this emerging dilemma, the need for an ongoing education program as proposed in this report may prove to be an effective strategy for sustaining MWBE programs.

INTERDISCIPLINARY APPROACH

Another objective of the Post-Croson Project is to stimulate an interdisciplinary approach to researching and understanding post-*Croson* MWBE programs through utilization of students and faculty from the University of Minnesota's Humphrey Institute of Public Affairs, Carlson School of Management, and Law School in the implementation of the Twin Cities' disparity studies. A series of meetings were held with representatives of the three units to begin clarifying which parts of the project each could undertake. The first meetings were with Dr. Samuel Myers, Chair of the Roy Wilkins Center on Human Relations and Social Justice in the Humphrey Institute, who is an economist with a national reputation on issues of race and marketplace discrimination and, in addition, has conducted a post-*Croson* disparity study. Dr. Myers

expressed a strong interest in conducting a multijurisdictional study through the Humphrey Institute. In response to the "Request For Proposal" issued by the Disparity Board, submissions were received from the Humphrey Institute and four private companies.

The proposal from Dr. Myers and the Humphrey Institute was quite unique in that it included an interdisciplinary approach to the study by utilizing advance students and faculty from the Law School and the Humphrey Institute. Another unique feature was that it also proposed a participatory model in which elected officials and staff members from the joint jurisdictions would be involved in a series of interactive seminars both as learners and as teachers. The purpose of the seminars was to utilize the disparity study as a process of educating, building consensus, and empowering elected officials and their staffs. By using this approach, it would also improve the chances of a MWBE program being maintained over a longer period of time because key decision-makers would have become knowledgeable stakeholders in the program. Unfortunately, this opportunity was lost when the Humphrey Institute withdrew its proposal—primarily because of the difficulty in coordinating seminar schedules with the availability of students and faculty, and having to comply with the twelve-month completion date established in the "Request For Proposal."

Some preliminary work was done with the Employer Education Service Program in the Industrial Relations Center of the Carlson School of Management to examine the feasibility of producing a continuing education program designed for MWBEs and larger majority contractors to assist them in understanding how to more effectively utilize and maintain programs in a post-*Croson* environment. However, it is not practical to initiate an education program of this type until the jurisdictions have first established their post-*Croson* programs.

MULTIJURISDICTION DISPARITY STUDY

The Disparity Study Joint Powers Board entered into a contract with BBC Research and Consulting on June 6, 1995 to conduct a multijurisdictional disparity study of Minority and Women Business Enterprises (MWBEs) for the jurisdictions of Ramsey County, the City of St. Paul, and Independent School District (ISD) #625. The primary focus of the BBC study was to do quantitative analysis of marketplace discrimination. Under a separate action, the Board also entered into a contract on November 11, 1995 with the Institute on Race and Poverty (a public

policy institute in the University of Minnesota's Law School) to organize structured public hearings regarding marketplace discrimination and to analyze information from those hearings. It was the position of the Board that it is important to have thorough but separate analysis conducted of both types of information for the purposes of producing statistical and anecdotal information that would accurately reflect marketplace discrimination that may have occurred.

Some disparity studies conducted by jurisdictions tend to emphasize the quantitative type analyses at the expense of analyses drawn from anecdotal data or hearings, in part on the assumption that the courts are more likely to be persuaded by "hard" data. Although such statistical data can be appealing, the courts have also held that statistical data alone is not necessarily proof of unfair discrimination. Fortunately, where matters of unfair discrimination are at issue, public testimony yet remains a fundamental part of proof of discrimination. It is therefore quite important when conducting disparity studies for public jurisdictions to include both types of analysis—statistical and anecdotal.

The first type of study conducted for the Board was the quantitative analysis of whether public jurisdictions have legal standing to institute certain programs to involve utilization of minority- and women-owned businesses in locally operated procurement programs. The first step in this process is to assess what initiatives the three jurisdictions have separately or jointly undertaken to provide equal access to their purchasing processes. The City of St. Paul instituted a MWBE set-aside program in 1976, but did not have a public hearing, staff, or a budget to support the program. The program was amended in 1982 to correct these deficiencies. Ramsey County followed in 1979 to establish a similar MWBE set-aside program. ISD #625 likewise did its purchasing through the Joint Purchasing Office in compliance with the City and County's MWBE programs. And in 1985, ISD #625 initiated its own purchasing office and instituted a set-aside program requiring a 10 percent goal for minority participation in all its construction projects, a 20 percent goal for goods and all services, and a 50 percent bid preference on purchases of selected goods and services. However, based on the *Croson* decision, ISD #625 likewise suspended its program in 1992.

Following the *Croson* decision, the three jurisdictions suspended their affirmative action programs and substituted a race and gender-neutral small business program. And in 1990,

Ramsey County and the City of St. Paul instituted a joint purchasing targeted vendor program with a 25 percent annual goal for targeted small businesses. ISD #625 followed suit by instituting an informal MWBE program.

In order for jurisdictions to institute a post-*Croson* race- or gender-conscious purchasing program, they must overcome the opposition addressed in *City of Richmond, Virginia v. J.A. Croson* and meet the standards set in that case. The City of Richmond adopted legislation requiring that at least 30 percent of all public contracts be awarded to racial minorities, which posed a question of whether the legislation violates the Constitution's equal protection provisions. In making this assessment, one of three standards can be applied: rational basis, standard intermediate scrutiny, or strict scrutiny standards. However, when issues of race are asserted, reliance is then made on the strict scrutiny test, which is the most rigorous scrutiny employed by the courts.

Under the strict scrutiny standard, a public jurisdiction is required to show both 1) compelling interest when instituting race-conscious decisions for contracts by showing its program is somewhat remedial in nature and is designed to overcome documented effects of discrimination, and 2) that the program is flexible and narrowly tailored to address the effects of discrimination. However, jurisdictions are not required to, per se, prove discrimination before enacting a race- or gender-conscious program, but, more clearly, to only present compelling evidence that appears reasonable, at face value, to be discriminatory. Where such evidence is shown, the jurisdiction can on its own or otherwise be required to undertake initiatives to overcome the effects of probable discrimination. In order for a jurisdiction to demonstrate that its contracting program does not produce the effects of discrimination, it would need to show that businesses in its geographic market area have reasonable access to the contracts that are awarded. A relevant geographic area would be defined as the metropolitan area in which the jurisdiction is located and also where it primarily makes its purchases. In the case of Ramsey County, ISD #625, and the City of St. Paul, their relevant geographic market area is the eleven-county Twin Cities metropolitan area.

In determining whether marketplace discrimination is occurring, there must be a determination of disparities between availability and utilization of minority- and women-owned firms in the market area. The most current complete data available for use in making these comparisons is the 1987 U.S. Economic Census which, obviously, at the time of this study was almost a

decade old. However, if there was a challenge to the use of these data, the burden would be shifted to the challenger to produce comparable and more current data that would sustain their challenge. Since most studies of this type rely on complete census data produced each decade, the reports used in this study very likely would withstand a court challenge.

According to 1987 U.S. Census Bureau data, minority and women business entrepreneurs showed significant revenue disparities when compared to white-male-owned businesses. For example, African American-owned businesses reported 56 percent of the revenue of the average white-male-owned businesses, Hispanics were at 27 percent, Asians at 63 percent, and Native American-owned firms at 51 percent. Women-owned businesses, in turn, reported about 33 percent of the revenue found for male-owned businesses. When the disparities are computed as actual dollars, according to BBC Research and Consulting, there is a significant loss of revenues to these communities.(7,8,9) For example, due to disparities between marketplace utilization and availability, Hispanic-owned businesses generated \$62 million less in revenues than would have been expected were there not disparate utilizations. Likewise, disparities between utilization and availability for African American-owned business amounted to \$88 million in lost revenues, Asian-owned business \$78 million, Native American-owned business \$12 million, and a \$4.4 billion loss for women-owned business.

Methods for Assessing Disparities

The essence of the *Croson* decision was that if jurisdictions are shown to cause disparities and otherwise participate in marketplace discrimination, they then have a legal responsibility to cease such practices and initiate corrective action programs. An examination of purchasing practices of Ramsey County, the City of St. Paul, and ISD #625 was conducted by BBC Research and Consulting to determine to what extent disparities existed. The examination primarily used accounts payable records for the period of 1985 to 1994 and telephone surveys.

From 1985-1994 for Ramsey County and the City of St. Paul, and from 1988-1994 for ISD #625, the combined purchases of the three jurisdictions was \$1,135,411,485, of which approximately 2 percent was expended with minority-owned firms and approximately 3 percent with women-owned firms. It is also interesting to note that there was a sharp decline in the amount of business done with minority firms following the *Croson* decision (issued in 1989).

Prior to 1990-91, minority businesses received some \$15 million in public contracts for the three jurisdictions, and after 1990-91, the amount of contract dollars awarded to minority firms declined to \$8.7 million, for a 42 percent drop in business. During the same time period, transactions with women-owned businesses increased from \$9.1 million to \$27.2 million for an increase of some 200 percent in business activity. Although the amount of business done with minority-owned firms and women-owned firms still showed disparities, these data strongly suggest that there has been intensified discrimination against minority firms and a lessening of discrimination against women-owned business since the *Croson* decision.

Assessing Availability

When assessing availability of minority- and women-owned business, the standard that the court uses is whether a business meets the test of being willing, able, and qualified to perform on a contract and to determine whether these standards are met. The types of data used for a *Croson* analysis included information from the U.S. Census Bureau, telephone surveys, and bidder lists provided by public jurisdictions. None of the data sets alone would be sufficient for this type of study, but when taken in combination, a fairly comprehensive picture of marketplace activities begins to emerge. For example, census data alone would not include enough detailed information to reflect many of the smaller emerging businesses that may seek contracts with public jurisdictions. Likewise, telephone interviews typically are good information sources but, on the other hand, are only an option if the business has a phone in service at the time of the interviews. Likewise, if the work of a sole proprietor would keep him or her away from the phone most of the day, the business would not be included in such a survey. Bidder or vendor lists, however, tend to produce the best information because they allow targeting of businesses that have either worked with a jurisdiction previously or are interested in doing business with a jurisdiction.

According to BBC Research and Consulting, a list of 11,026 businesses in the relevant standard industrial classification was secured from Dun & Bradstreet for a telephone survey, of which 9,289 were usable. A total of 739 minority-owned and 225 women-owned businesses from the joint city/county vendor list was also available for telephone surveys. *An analysis of the sets of data showed, with few exceptions, that at the 95 percent level of confidence, the city,*

county, and school district show statistical and anecdotal evidence of passive and active discrimination against minority-owned and women-owned businesses when comparing utilization of MWBE and the availability of MWBE to perform work for the respective jurisdictions. (7,8,9)

In particular, the findings indicated disparities were present in:

City of St. Paul procurement for: (7)

- African American-owned firms in the goods, professional services, and other service sectors
- Asian-owned firms in the construction, goods, professional services, and other service sectors
- Hispanic-owned firms in the construction, goods, professional services, and other service sectors
- Women-owned firms in the construction, goods, and other service sectors

Ramsey County procurement for: (8)

- African American-owned firms in the construction, goods, professional services, and other service sectors
- Asian-owned firms in construction, goods, professional services, and other service sectors
- Women-owned firms in the goods, professional services, and other service sectors

Independent School District #625 procurement for: (9)

- African American-owned firms in the goods, professional services, and other service sectors
- Asian-owned firms in the goods, professional services, and other service sectors
- Hispanic-owned firms in the goods, professional services, and other service sectors
- Women-owned firms in the goods, professional services, and other service sectors

Public Hearings

The Disparity Study Joint Powers Board also contracted with the University of Minnesota Law School's Institute on Race and Poverty (IRP) to design and structure public hearings regarding marketplace discrimination in the Twin Cities metropolitan area. As was reported earlier, in cases of discrimination the courts look to both statistical and anecdotal evidence for assessing harm and potential remedies. The Institute on Race and Poverty accepted and adopted the analysis conducted by BBC Research and Consulting showing the jurisdictions' passive and active participation in discrimination through their procurement programs. And based on additional testimony coming from the public hearings, the Institute on Race and Poverty

independently found that the three jurisdictions were at least passive participants in a discriminatory marketplace. (10)

Two public hearings were held on January 11th and 22nd, 1996 in St. Paul. Over thirty individuals provided sworn or written testimony. The hearing panel was composed of members of the Disparity Board. Testimony was received from all protected class groups including African American, Native American, Hispanic, Asian, and women. A court reporter was present and a transcript of the hearing was produced.

Testimony from the hearings was wide-ranging and covered many key areas of the procurement process as it relates to marketplace discrimination. There was testimony evidencing unfair discrimination in the goods, construction, professional, and service industries in the metropolitan area marketplace. Below is a summary of some of the more compelling testimony addressing specific areas of perceived unfair discrimination as it relates to both public and private contracting.

Racial Harassment on the Job Site

A minority owner of a construction firm that had been in business for fifteen and a half years testified of harassment he had faced while working on two contracts for the City of St. Paul. On the first contract, he was the general contractor because he was the lowest most responsible bidder. As general contractor, he contracted out certain specialty areas to other contractors—which is normal and customary in the construction business. According to the minority contractor, the City inspector assigned to the job required him to provide the names of all of his subcontractors for review and comment. The inspector then instructed him to remove the bids of two minority subcontractors because, in the contractor's opinion, the inspector did not believe that they could adequately perform the job. Under pressure from the inspector, the general contractor complied by removing the two minority contractors from consideration and then took bids from two non-minority contractors whom the inspector found acceptable and they were subsequently hired. However, the bids from these contractors were higher than the previous bids of the minority contractors—resulting in the loss of profit to the minority general contractor.

In this instance, the city inspector had no authority to dictate who the general contractor hired as long as the subcontractor met license and bonding requirements. The inspector's

responsibility was to inspect the work of the contractor and determine whether the work was compliant. If the work was not compliant, the general contractor would have to correct the work at his expense or the contract could be terminated—again at the expense of the contractor. It was the position of the minority general contractor that the inspector had allowed his perception of the ability of minority contractors to perform on the job to conflict with normal business practice. The contractor felt that he had been harassed by the inspector resulting in discrimination against him and the two other minority contractors. He stated that he acquiesced to the inspector's demands in order to keep the contract.

The contractor also testified that he was furthered harassed by the same inspector later on in the project when the inspector unilaterally, on two separate occasions, changed the job specifications—which cost the contractor both time and money. According to the contractor, the inspector then refused to authorize time and cost changes in the contract. This act was so egregious that the contractor finally took the City to court and the court upheld his claims against the inspector. Finally, the minority contractor found that the inspector had preferred a non-minority general contractor for the job from the beginning and was harassing him in an attempt to drive him off the job.(11)

The same minority building contractor testified that he was later hired as a subcontractor to do earth removal work on the east side of St. Paul. He returned to the job site one morning to discover racial slurs and a swastika written on some of the lumber that was being used at the project. He also reported that an expensive piece of his earth removal equipment had been stolen. Fortunately, the theft was covered by insurance. He said, in his opinion, the acts were done by some neighborhood thug types who he had seen earlier hanging around the job site watching him work and that these acts were an attempt to harass and intimidate him.

Bid Shopping

A minority contractor testified that he submitted a timely bid on an annual maintenance contract with a large Twin Cities corporation. Also bidding on the contract was a contractor who had previously been consistently awarded this particular maintenance contract over a number of years. The minority contractor later inquired about the status of the contract after the bid process closed, and was informed that they did not have his bid—apparently it had been lost in the mail.

He insisted that he had submitted a timely bid and it had to be somewhere in their system. As a result of his persistence in inquiring as to where his bid was, the document reappeared a few days later—at which time he was informed that he had been under-bid and the contract was awarded to the firm that previously held the contract. The minority contractor suspected at that point that his bid had been “shopped” or shared with the other contractor as a way of getting a lower bid, particularly in view of the fact that his bid document had been mysteriously misplaced and then, shortly thereafter, his competition under-bid him by less than 1 percent on a \$850,000 contract.

The contractor stated that when he began protesting against what he felt to be a likely discriminatory action, he was told not to make waves and that the company would work with him by directing some non-bid contracts to him. He accepted this arrangement as a way of getting his foot in the door and being able to get some work. Over time, the volume of work began picking up and he was getting into position to again bid on the annual maintenance contract. Then a change in management within the company occurred and, almost immediately, what had otherwise settled into a rather smooth operation, suddenly become quite erratic. In particular, he stated that he began receiving conflicting information about job assignments (which building to clean, which floors to clean) and getting negative write-ups on his work.

The minority contractor again challenged the action of company management through their compliance office and an internal evaluation confirmed that their actions were discriminatory. However, in the contractor's opinion, top management decided that because of the informal nature of his contract, coupled with what they saw as their potential exposure, it was better for them to allow his contract to lapse and release him rather than sanction the manager responsible for the discriminatory action. In addition, the contractor stated that he decided not to sue the company because he felt that it would have a long term negative effect on his ability to get additional work in the industry.

Another minority contractor testified about his experiences with bid shopping. The examples he gave were about general contractors who would solicit his bids as a minority subcontractor and would then in turn inform his white competitors of his bid quote, thus allowing them to under-bid him. He knew that this was true because, on occasion, he would be informed of this practice by white contractors who did not participate in nor appreciate these practices. This contractor stated that he reported these incidents to the appropriate contracting public juris-

dictions, but they said that they were powerless to regulate subcontracting activities of general contractors.(11)

Harassment and Unilateral Termination of Contract

Another minority contractor testified of similar racial harassment. This contractor likewise owned and operated a building maintenance service for some twelve years and stated that during this time he had built his business up to the point where he was generating three-quarters of a million dollars gross on contracts from servicing twenty-four buildings for a large real estate management company. He stated that there was a sudden change in the company's middle management and the person who supervised his contracts was replaced by a white women. His first contact with her was when he was informed, without any prior notice or justification, that she was reducing his contract by eighteen of the twenty-four buildings within the next three days. According to the minority contractor, she informed him that the only reason he could keep the six remaining buildings was that they were outside of her district.

As a result of what the contractor saw as a unilateral discriminatory action, his gross revenue immediately dropped from three-quarters of a million dollars down to \$180,000 gross. This forced him to lay off many of his employees and, according to him, to witness the literal destruction of a family business that he had worked so hard to build. He testified that he did not take any legal action because he did not think that anything would be done.(11)

"Good Old Boys" Network and Predatory Business Practices

A minority business owner who operated a trucking business for eleven years testified that he pursued an opportunity to expand his business by acquiring a license to become a licensed truck broker. A truck broker in essence leases and provides trucks on an as-needed basis to contractors working at construction sites. He said that he started his business on a small scale and eventually began to add more volume—at which time he came to the attention of the two largest truck leasing firms in the area who saw him as potential competition.

The two large truck brokers, operating as a "good old boys" network, entered in collusion with a large contractor who had a daily need for a sizable volume of trucks at his construction sites. And according to the minority truck broker, the large contractor began requesting trucks

from him. The contractor, for example, would order one volume of trucks from him in the morning for the next day job and then would immediately arrange contracts with individual independent truck drivers to meet the same demand. However, by the afternoon he would be contacted by the contractor who would change his order by either increasing or decreasing the number of trucks he would need. According to the minority truck broker, this became a repeated pattern which, in a very short time, created complete chaos for his business and major conflicts with the independent truck drivers. Eventually he was unable to place any credible orders for leased trucks and as a result, was driven out of business. Once out of business, he stated, the two large brokering firms went back to business as usual.(11)

The Use of Business Fronts

A minority business owner of a janitorial service testified that he had been approached on more than one occasion by majority firms requesting permission to submit his business name as a part of their bid proposal for which they would pay him a fee and he would not have to do any work on the job. The idea being that they would use his name as their minority subcontractor which could increase their chances of getting the contract. The minority business owner testified that he refused their offer because it could undermine the legitimate minority procurement program and also that it was illegal to use front businesses.

Another minority contractor testified that public jurisdictions willingly conduct extensive business with white female front companies to the exclusion of legitimate companies owned and operated by racial minorities. In these instances, a front company was described as one that was historically owned and operated by a white male but, because of the recent emphasis being placed on providing opportunities for women-owned business, the male-owned companies were reorganized by elevating either the wife, daughter, or girlfriend of the male owner to president and general manager of the business. This type of business is considered a front because, in most instances, the white male continues to operate the business as an employee while the woman often continues to work a regular 8:00 to 4:30 job that is completely unrelated to the particular business. This minority contractor also claimed that the regulatory agencies responsible for certifying minority and women vendors are aware of these female fronts but, none-the-less, are quite

willing to provide them with contracts so they can claim that they are doing increased business activity with women contractors.(11)

Bonding

A minority contractor testified about the difficulty in being able to get bonding for more than one City of St. Paul janitorial service contract. He said that he had the capacity to perform multiple contracts, but he was always limited to small single contracts. He felt that the bonding requirements were too steep and believed that a single bond could cover multiple contracts, particularly when a contractor has a good track record with the City. He pointed out that it is common practice for a single bond to cover larger construction contracts and that the same opportunity should be available to him as a small minority contractor.

Predatory Business Practices in Product Distribution

A minority business owner testified about the pervasive predatory business practices in the product distribution business. He stated that he was low bidder and was awarded a million dollar plus contract with the State of Minnesota and University of Minnesota to supply them with light bulbs or lamps.. As a bulb or lamp distributor for a large manufacturer, he negotiated a fixed price with the manufacturer which became effective upon receipt of the State and U of M contracts. However, without his knowledge, the manufacturer granted one of his competitors who had also previously held the State of Minnesota and U of M contract, a "favorite son price" which was lower than his negotiated price.

He testified that his competitor was then allowed to enter into side individual contracts with the State of Minnesota and U of M because he was able to provide them the product at a lower price. The contractor knew that what the three other parties were doing was illegal, but to pursue a full-scale lawsuit would have been too costly and time consuming so he did not pursue the matter. This minority contractor, who had been in business for some fifteen years, testified that as a result of these type of predatory business practices, he was forced completely out of the lucrative bulb and lamp business.(11)

Discrimination in Pricing of Products

A minority insulation contractor testified that he was forced to pay higher wholesale prices for insulation product than his white competitors. This came to his attention when he was trying to sell insulation product to a white building contractor and was told that his price was not competitive. He stated that he then confronted the wholesaler about being overcharged and the wholesaler then agreed to lower his price, but, even so, he believed that he was still being charged more than other contractors. And without bringing some legal action, he could not find out the truth of the situation. It was his strong belief that the practice of charging minority contractors more than majority contractors for wholesale products is more pervasive than is generally thought to be in the industry.(11)

Discrimination Based on Race and Non-Union Affiliation

A minority contractor testified that although he has been in the construction business for some eighteen years, he and other minority contractors are unable to get hired onto larger public-bid projects because of race and non-union status. The contractor stated that he bid on a number of contracts and agreed to pay prevailing wages, but union-affiliated general contractors refused to hire him. He also claimed that general contractors who are members of the Associated General Contractors (AGC) likewise refuse to hire minority contractors unless they become members of AGC. He also pointed out that it was AGC who initiated the lawsuit in the *Croson v Richmond* case and that this was further evidence of their opposition to minority contractors. This minority contractor also testified that their bias is only directed at minority contractors because AGC is very willing to hire women contractors fronting as legitimate businesses.(11)

Discrimination in Education and Age

A minority contractor testified that many minority males who are interested in entering the trades are kept out because the building trades operate their own training school in Roseville, Minnesota and make no real effort to recruit and admit minority males. He stated that the Roseville-based apprenticeship training school has been in operation for over ten years and, to his knowledge, not more than five Black men have finished the laborer apprenticeship program during that period. In addition, he further testified that the training school only admits persons

between the ages of 16 and 24, which he believes to be in violation of the age discrimination law. He also made the point that there are many Black males who could not attend the school because general contractors would not hire them; working for or being sponsored by a contractor is a prerequisite for being admitted to the school. Given these types of barriers, as he stated, many young Black men interested in the construction trades resort to working short term jobs, primarily with non-union contractors, as a way of building up some work history and skills.

However, as a result of being forced into these non-apprenticeship and alternative arrangements over an extended period of time, many of the young men and women very quickly find themselves beyond the cutoff age to be admitted into the apprenticeship school. And although skilled, they have no formal apprenticeship record which literally forces them into a long-term situation of having to work as skilled laborers while earning below their skill level and doing so without the benefits of insurance and retirement plans.(11)

Sizing of Contracts

A minority woman owner of a small engineering firm testified that her business opportunities had been severely restricted by the way public jurisdictions approach packaging and awarding engineering contracts. The primary problem reported was that public jurisdictions tend to package engineering contracts into large items, thus making it practically impossible for small firms such as hers to effectively compete for contracts. According to her testimony, when she approached jurisdictions about this situation she was advised to approach a large engineering firm as a potential subcontractor. Her experience was that large firms do not have any incentive to subcontract with small firms, particularly where they have the capability to perform the entire job. When asked whether it is reasonable to break down larger contracts into smaller contracts (based on her knowledge of how engineering contracts are packaged), her response was yes. She stated that this can be done primarily because larger engineering contracts are the resulting combination of small and medium contracts packaged into one. The practice of doing this is for the convenience of contracting agencies who prefer working with one firm.(11)

Withholding Payments and Harassment

A minority contractor testified that he was aware of situations where majority contractors, who did not particularly want to hire minority subcontractors but did so because of legal requirements, would outright harass them throughout the length of the contract. The example given was that after hiring minority subcontractors, the majority contractors would engage in very deliberate harassing tactics—the most serious of which was to create bogus disputes about the quality of their work, and then initiate the process of withholding payments due. This tactic would often be extended for 60 to 90 days—which would make it literally impossible for the minority contractor to pay his employees. He further testified that many minority contractors have been forced out of business through harassment and withholding of payment schemes. And government regulatory agencies allowed it to happen by not getting involved.(11)

Conclusions of BBC and IRP Findings

Based on the combined findings of disparities by BBC Research and Consulting, sworn testimony provided at the public hearings, and subsequent analysis by the Institute on Race and Poverty, it was concluded that each jurisdiction—the City of St. Paul, Ramsey County, and ISD #625—at least *participated in passive discrimination* as relates to race, gender, and political designation. As a result of these findings and conclusions, each jurisdiction met the legal standards of having a *compelling state interest* and meeting *strict scrutiny* necessary for instituting protected-class-based corrective action programs in the following areas:

	African American	Asian	Hispanic	Native American	Women
St. Paul					
Construction	✓	✓	✓	✓	✓
Goods	✓	✓	✓	✓	✓
Professional Services	✓	✓	✓	✓	✓
Other Services	✓	✓	✓	✓	✓
Ramsey County					
Construction	✓	✓	✓		✓
Goods	✓	✓	✓	✓	✓
Professional Services	✓	✓		✓	✓
Other Services	✓	✓	✓	✓	✓

	African American	Asian	Hispanic	Native American	Women
ISD #625					
Construction	✓	✓	✓		✓
Goods	✓	✓	✓	✓	✓
Professional Services	✓	✓	✓	✓	✓
Other Services	✓	✓	✓	✓	✓

RECOMMENDATIONS

The Disparity Study Joint Powers Board, at its April 4, 1996 meeting, officially adopted the combined findings of BBC Research and Consulting and the Institute on Race and Poverty. And at a subsequent meeting held on August 29, 1996, the Board adopted a program framework that was developed to serve as a guide that should be followed by the City of St. Paul, Ramsey County, and ISD #625 for fashioning legally compliant remedial corrective action programs. It was the opinion of the Board that without the framework and recommendations, the jurisdictions could unknowingly institute programs that might be insufficient to redress the unfair discrimination that was identified in the study or, alternatively, might institute programs that would exceed the findings, thus putting themselves back in a situation similar to what occurred in *Croson v Richmond*. The recommendations were inclusive of the key elements that were found to be essential for successful MWBE programs which include bonding, *uniform enforcement, financing, and education.*

Outlined below is the program framework adopted by the Board and recommended to the cooperating jurisdictions for implementation. Remedies are summarized here under four general headings:

- I. *Outreach* to minority-owned, women-owned, and small businesses
- II. Encouragement of minority- and women-owned *Business Development*
- III. *Contract Procedures*
- IV. *General Administration, Enforcement, and Review of Remedial Policies*

I. Outreach

Outreach to small business, both in terms of encouraging opportunities and providing information regarding the ways to best take advantage of those opportunities, is critical to encouraging the participation of underutilized MWBE. This may be undertaken both through direct outreach by the jurisdictions to provide information and advice about specific bidding opportunities, or general advice about conducting business with the jurisdictions, or it might include encouraging mentoring relationships between prime contractors and MWBE.

Recommendations include:

- A. Increase efforts to publicize the jurisdictions' programs to potential MWBE firms and to provide education and information on how to do business with the jurisdictions.*

Suggestions include:

1. Sponsor regular MWBE or small business seminars and trade shows to increase the visibility of jurisdictions as potential employers and to provide a venue to explain procedures for conducting business with the jurisdictions.
 2. Produce a video on how to do business with the jurisdictions. Topics might include such things as explanations of the bidding process, certification procedures, and purchasing regulations. The video could then be regularly aired on regional cable access channels, and distributed to libraries and organizations that promote the interests of minorities, women, and small business owners.
 3. Set up a "help line" phone number that vendors could call for answers to their questions about purchasing and contracting services with the jurisdictions.
 4. Produce a newsletter geared to issues and questions frequently raised by MWBE or small firms.
 5. Direct mass media advertising by the jurisdictions to promote greater awareness of the MWBE program.
 6. Utilize various local plan rooms to distribute rules on bidding opportunities.
- B. Develop more active working relationships with local advocacy groups promoting interests of MWBE.* Proposals include the suggestion that the Joint Purchasing Office staff might develop stronger relationships with local organizations involved with MWBE—both to be

better informed about MWBE needs and to open channels for communication. This might also include automatic notification of bidding opportunities.

C. Improve and widen efforts to publicize bidding opportunities. Possible means include:

1. Maintain a bidder list of vendors interested in doing business with the jurisdictions. Bids could then be solicited regularly from all firms on this list.
2. Advertise opportunities to bid in community periodicals, particularly those aimed at minority and women readership.
3. Collaborate with other local governments to create a regional bid notification program.
4. Develop a strategy to more widely publicize the automated Quest notification system in which St. Paul and Ramsey County already participate. ISD #625 should investigate the possibility of participating in the program.
5. Develop a system to send an immediate fax or electronic mail notice to any vendors interested in receiving requests for proposals and bids at the time of the announcements.
6. Investigate the possibility of creating (perhaps in conjunction with other regional jurisdictions) an on-line network which might serve as a regional clearinghouse for bidders and/or MWBE.

D. Increase feedback and support for MWBE bidders. Means might include:

1. Create a mechanism to provide feedback to unsuccessful MWBE on reasons for rejections and advice on improvements.
2. Consider contacting MWBE firms that did not submit bids to inquire as to reasons and to promote future bids.
3. Provide support services for successful MWBE bidders, including how to strengthen future bids and education on jurisdictional requirements.

E. Encourage prime contractor outreach to subcontractors.

1. Publish a subcontractor directory and assist subcontractors in marketing expertise to prime contractors and developing long-term relationships with prime contractors.

2. Publish (perhaps on-line) a minority supplier directory which might include such things as profile sheets of MWBE—including commodity area, capacity, resume of past work references.

II. Business Development

Work to ensure the formation of fully functional business enterprises that can take full advantage of opportunities in the Twin Cities metropolitan area. This activity may consist of creating public and private partnerships that benefit MWBE and small businesses.

A. Remedies for lack of experience or skill in critical areas.

1. Jurisdictional staff should familiarize themselves with training provided in the private and public sectors for contractors and be able to provide appropriate referrals and technical assistance.
2. Jurisdictions could develop a strategy for assessing which federal funds under their control could be used to provide targeted training opportunities for MWBE.
3. Prepare (in collaboration with other jurisdictions) a regional consolidated list to include community organizations; small business development centers; sources for tax, legal and accounting assistance; and business development services targeted toward MWBE.

B. Promote equal access to suppliers. Recommendations are to increase efforts to introduce minority and women subcontractors to suppliers through prime contractors utilizing quarterly events such as the Construction Exchange Forum.

C. Fund existing training organizations. Partnerships between government entities and private sector training organizations should be developed. Incentives and selective funding should be utilized by the governments to foster a productive training ground for MWBE.

D. Increase experience of MWBE through business partnerships.

1. Establish a mentor/protégé program. A program might be established to pair small emergent firms with larger more established firms. Such a program might seek to do so as a general relationship or on a more limited basis to remedy specific needs (e.g., improving skills in estimating and scheduling) of a contractor. The jurisdictions might also consider reimbursing contractors for costs associated with the program or

through credit toward contracts. Such a program might be attempted in cooperation with other jurisdictions or private entities.

2. Utilize on-the-job demonstration projects.

III. Contract Procedures

Methods could be implemented by the participating jurisdictions to ease access by MWBE and small businesses. Throughout these recommendations prime contractors should also be encouraged to enact similar contract procedures in their dealings with subcontractors.

- A. Assure sufficient lead times for preparing bids and proposals.* The amount of time allotted for the receipt of contract bids should be increased to provide sufficient opportunities for smaller and emerging firms. In addition, jurisdictions should consider advance notification of projected upcoming projects and purchases of goods and services to provide adequate preparation time for bids.
- B. Eliminate unnecessarily restrictive contract specifications.* A strategy should be created to review contracts to ensure that specifications are not unduly restrictive and that their inclusion will not unnecessarily exclude certain firms. In particular, jurisdictions should curtail the use of specific brand preferences and instead provide for the use of comparable substitute products where reasonable.
- C. Restrict size and scope of contracts.* The jurisdictions should develop a strategy through the St. Paul Human Rights Department, Ramsey County Affirmative Action Office, and ISD #625's Equal Opportunity Office to review large contracts and proposals for the possibility of reducing the size of contracts and encouraging bidding by MWBE. This might mean increased use of direct contracting with subcontractors by the jurisdictions, but evaluation of such procedures should factor in the opportunities gained for MWBE firms as well as additional costs imposed upon the jurisdictions.
- D. Reduce extended length contracts.* For master contracts (those for frequently ordered goods and services and for which the contract may be automatically reissued without competitive bidding) each jurisdiction should develop a strategy to provide reasonable access for MWBE. Target MWBE for a limited term (e.g., two years) and establish a policy of contacting at least one MWBE to solicit quotes for all contracts of less than \$25,000.

- E. Increase technical assistance.* Jurisdictional staff should familiarize themselves with training provided in the private and public sectors for contractors and be able to provide appropriate referrals.
- F. Equalize access to bonding.* In addition to the high costs inherent in bonding, it should also be noted that smaller firms pay disproportionately more for bonding than do higher revenue firms. To address this problem, the following remedies have been proposed:
1. Consider bonding in phases to reduce the size of bond needed at any one time.
Increase the use of discretionary waivers.
 2. "Break out" the cost of bonding from the consideration of a low bid (i.e., consider bids absent bonding costs) and then jurisdictions would pay (actual) costs of bonding separately.
 3. Ramsey County and ISD #625 could emulate the City's performance bond program for small prime contractors.
 4. Develop ordinances and enforcement processes in order to handle complaints of unequal access to bonding for MWBE (through St. Paul's Human Rights Department Contract Compliance Division).
 5. Jurisdictions should develop a state legislative initiative to allow for government bodies that have adopted findings from a disparity study to have discretion in waiving bond requirements for contracts between \$50,000 and \$250,000. This discretion, like discretion currently available on contracts under \$10,000, should be used to aid contractors who may be otherwise unable to contract with the government.
 6. Jurisdictions should develop a strategy for extending a bonding assistance program to MWBE subcontractors.
- G. Equalize access to insurance.* For some firms, especially professional design and engineering firms, the cost of insurance is not proportionate to a firm's volume and thus disproportionately affects smaller firms. Jurisdictions must evaluate the insurance requirements placed upon contractors and match the insurance level with the actual degree of risk.
- H. Equalize access to financing.* There are numerous existing programs into which a jurisdiction may venture, but government must carefully evaluate each program and perhaps do

more itself through direct participation in financing programs specifically for MWBE if the programs are inadequate. The following proposals have been made:

1. Jurisdictions might refer small contractors to appropriate sources of financial assistance such as operating loans and gap loans. Jurisdiction staff should be knowledgeable about local sources of financial assistance, serve as a clearinghouse for information, and make appropriate referrals.
 2. Direct participation by jurisdictions in programs to assist small businesses in gaining access to financing. Jurisdictions might either provide funds or guarantee funds to eligible businesses for working capital to complete work on government contracts.
 3. Jurisdictions could directly fund a small business financing program.
 4. A linked loan program, guaranteeing loans for 90 percent of loans by certified MWBE, possibly with interest rates minimally above commercial rates.
 5. St. Paul's Business Resource Center currently serves as a one-stop clearinghouse for information on business opportunities and financing. The center should develop a strategy for accessing certified MWBE, and provide them with the range of services of the center. Ramsey County and ISD #625 should examine a strategy for enacting a partnership with the Business Resource Center to assist firms doing business with them.
 6. Linked deposit initiative. Jurisdictions might develop a strategy for instituting a linked deposit program, requiring banks in which they deposit funds to establish comprehensive financing programs for MWBE firms. The financing programs of the banks should be directly tied to the job creation ability of the firms.
 7. Directly invest in MWBE or small firms through the purchase of qualified securities as an equity investment according to the job creation ability of the firms.
- I. *Promote equal access to labor.* The government must ensure that existing anti-discrimination laws are strictly enforced, and that tax dollars are not used to subsidize the practice of discrimination whether by the jurisdictions or contractors.
- J. *Ensure prompt payment to contractors, vendors, and/or subcontractors.* For uncontested requisitions or invoices submitted to a jurisdiction, payment should be issued within three business days. A policy of mandating prime contractors to pay subcontractors uncontested

payments within four business days of submission should also be enacted by the jurisdictions.

K. *Ease harassment, predatory business practices, and double standards of performance.* Suggestions include:

1. Jurisdictions must create a climate of fair business practices and expect this behavior from both its employees and its contractors. The government must ensure that existing anti-discrimination laws are strictly enforced, and that tax dollars are not used to subsidize the practice of discrimination.
2. To minimize the practice of predatory bid shopping, St. Paul should re-implement a previous city ordinance which required prime contractors to submit with their bids their affirmative MWBE firm utilization including the names and price quotes of their subcontractors. Ramsey County and ISD #625 should follow a similar procedure.

L. *Target goal initiatives.* As part of the mechanism for ensuring access to government contracting by all people, flexible target goals for African American, Asian, Chicano/Latino, Native American, and women contractors and subcontractors should be instituted. The targeted goal ranges should initially account for the ranges of availability of each group, but be flexible to accommodate more accurate measures of availability. Utilization is to be measured as a whole, rather than on a contract by contract basis. Monetary measurements, as opposed to time constraints (to avoid discriminatory timing of contracts) should be implemented to track utilization of each specific MWBE classification. If utilization fails to bear a resemblance to availability ranges, sheltered markets or enhanced bid preferences should be implemented.

M. *Pre-invitation to bid steps.*

1. Human Rights Department should review proposed contract specifications to determine availability of MWBE with capacity to perform as primes, capacity to perform as subcontractors, possibility of breaking up contracts, or to revise specifications to make them more accessible to MWBE. If a MWBE is available, altering the requirements or designating the contracts as MWBE contracts should be considered.

2. Human Rights Department should send the names of MWBE to a specific department or the Joint Purchasing Office for attachment to specifications in the invitation to bid sent to prime contractors. Prime contractors might then be required to hire a listed MWBE as a specification of the contract.

N. Review of bidding process. Human Rights Department should review bid for inclusion of a certified MWBE as specified. If the bid is responsive, the contract may be awarded. If the bid does not include a MWBE as specified, review of the bidding firms' reasons should be conducted. If, after investigation, an acceptable reason is found, an award of the contract may follow. Non-responsive bids and bidders are ineligible for the contract reward.

O. Increase information about bidding opportunities and the bidding process. Utilize a professional services outreach program that is designed to address outreach-associated barriers in the area of professional services.

P. Equalize access to insurance. Jurisdictions should develop a strategy for instituting an owner controlled insurance program (OCIP) for larger contracts to assist MWBE bidding on public contracts. With OCIP, the jurisdiction commonly purchases all insurance and bonding expenses on some large contracts awarded.

Q. Equalize access to supplies. To overcome discriminatory practices and pricing, the jurisdictions could implement a 5 percent price preference for MWBE. Criteria must be established and should take into account and adjust for different types of purchases and for different commodity/service groups, depending on the degree of price competitiveness and the availability of MWBE. A sliding scale might be instituted (subject to adjustment), although state law may need to be altered to raise the preference above 5 percent. Purchasing agents in jurisdictions might directly intervene with suppliers to encourage fair pricing and payment terms for MWBE vendors. Incentives could be offered to encourage suppliers to participate in such a program.

IV. GENERAL ADMINISTRATION, ENFORCEMENT, AND REVIEW OF REMEDIAL POLICIES

A. Certification of MWBE. A fair and accurate assessment of which firms should be entitled to MWBE benefits is fundamental to many of the recommendations. To this end, the jurisdic-

tions should develop a uniform set of legitimate business-related standards for certifying eligibility for MWBE programs. To be truly effective, however, jurisdictions would also need to provide sanctions for violators as well as adequate resources and staffing to permit investigation and complexity of overlapping bureaucratic certification procedures. Jurisdictions should consider promoting the development of a single regional certification procedure incorporating and unifying as many other public and private agencies as practicable. This might be accomplished through the use of a business license issued through a single licensing office representing all jurisdictional parties.

B. Enforcement. The effectiveness of many of the recommendations will depend on the ability of a jurisdiction to resolve claims of discrimination which present themselves in the course of the contract process. Effective implementation of all remedial actions is fundamental to counteracting existing contract disparities. Jurisdictions should consider:

1. Jointly developing a strategy allowing any discrimination issues evolving out of a MWBE program to be processed as a human rights complaint by their Human Rights Department.
2. Developing a strategy for processing other non-discrimination issues that could be initiated by a contractor and, to the extent possible, utilize existing complaint resolution processes.

C. Numerical review. These recommendations suggest the importance of creating an administrative and review framework capable of accurately assessing problems in the system; effectively tailoring remedies to respond to disparities as well as to update ineffective remedies. Furthermore, a number of recommendations stress the importance that care be given to adequately track the efficacy of such programs and to provide for their discontinuance after stated goals have been met.

1. Data on marketplace utilization and availability must be kept and regularly updated.
2. Criteria to judge for discrimination and improvements should be developed.

D. Anecdotal review. As numerical data plays a critical role in the investigation and remedial efforts of jurisdictions, so too does information that may not be fully conveyed by quantitative evidence. Programs that are dependent upon quantitative information must also account for qualitative evidence of compliance.

E. Improved tracing mechanisms.

1. An accounts payable system should be designed to automatically track MWBE payments.
2. Actual payments received by MWBE subcontractors rather than awards should be tracked.
3. The use of MWBE subcontractors by construction and professional design firms should also be tracked.

F. Graduation and sunset provisions. Where applicable, each outlined program or activity should contain mechanisms that signal the end of that program or activity. Some programs may be capped by a time constraint or a market share level, and some may be terminated based on the effectiveness of the program. Programs might be scaled back over several years or the magnitude of a program might decrease every year.

G. Race and gender goal setting and review. Each jurisdiction should develop mechanisms by which availability and utilization of each racial and gender group classifications should be abandoned in favor of consolidation.

FINDINGS OF THE POST-CROSON PROJECT

The Board held its final meeting on September 12, 1996 at which time it directed submission of its final report and recommendations to the St. Paul City Council, Ramsey County Board of Commissioners, and the Board of Education and resolved that these governing bodies take immediate action to implement the remedies outlined in the report and that action should be taken within 90 days of their acceptance of the report. Members serving on the Board at that time included Ramsey County Commissioners Rafael Ortega and Hal Norgard, City Council Members Dave Thune, Janice Rettman and alternate Jerry Blakey, and School Board Members Mary Phillips and Al Ortwig. On August 20, 1997 and September 16, 1997 the St. Paul City Council and Ramsey County Board of Commissioners, respectively, adopted their versions of Post-Croson corrective action programs. It was recently reported that the St. Paul Board of Education plans to adopt its program in December 1997.

Outlined below is a comparative summary of how well the St. Paul city government and the Ramsey County government complied with the narrowly tailored recommendations provided

to them by the Disparity Study Joint Powers Board. (See Appendix A at the end of this report for a listing of which recommendations were adopted by Ramsey County and St. Paul.) No evidence was available from Independent School District #625 at the time of this report because they had not yet adopted a program.

Ramsey County complied with sixty-four out of sixty-six recommendations for a compliance rating of 97 percent while St. Paul only complied with twenty out of a possible sixty-six recommendations for a compliance rating of 30 percent. One very perplexing question that immediately emerges is how can two public jurisdictions faced with the exact same set of factual problems reach such different and divergent program conclusions? As one who followed this process rather closely as Chairperson of the Disparity Study Joint Powers Board, it seems that the answer is tied deeply to the political and philosophical leadership of the two jurisdictions. For example, early in the process the Ramsey County Commissioners who served on the Board staked out strong leadership positions. Throughout the public hearings and Board deliberations, the attitude continually expressed by Commissioners Norgard and Ortega was "If we have a problem, let's deal with it." In addition, County staff assigned to the Board remained diligent, professional and attentive to their work product.

The City Council members, on the other hand, never seemed to gain control of the policy initiative. Although Councilmember Thune was resolved in his support of the program's direction, there was minimal participation by his colleagues. In addition, little if any administrative staff support was provided by the former director of the St. Paul Human Rights Department. As a consequence, the offices of the City Attorney and Purchasing took control of the policy initiative and ultimately shaped the program from their perspectives. One observer commenting on the City's program aptly stated that "It looks like that city program will be a lot more of the same nothing."

In addition to St. Paul City Government's low level of compliance with the Board's recommendations, the City also deviated significantly from the recommendations by including in their correction action program predominately white male-owned businesses--that are referred to inappropriately as economically disadvantaged small businesses (EDBs). When the City staff was asked their rationale for this decision, the response was that this was something the City wanted to do. This position however runs counter to the sentiments expressed by many minority

and women business owners during public hearings. Specifically, they stated that programs to address biases against minority- and women-owned businesses should not be diluted by including majority or white-owned businesses. Their concerns seem to be justified considering that according to a 1995 *City Targeted Vendor Report*, minority- and women-owned businesses represent only 34 percent of all businesses certified under the Targeted Vendor Program and EDBs represent 66 percent--or the majority of businesses in the program.

The question remains as to the City's rationale or compelling basis for including so-called EDBs in a Post-Croson corrective action program. There is no evidence compiled by the City showing disparities or differential treatment against majority-owned businesses. It does, however, seem quite paradoxical that the City of St. Paul maintained that such corrective action programs were illegal for minority- and women-owned businesses absent a definitive disparity study but, upon showing the disparities against minority- and women-owned businesses and the need for corrective action, the City also provided corrective action for majority-owned businesses.

Who, then, are the businesses that constitute the so-called "economically disadvantaged businesses?" According to the federal government's definition of a disadvantaged business enterprise, it is a business which is owned and controlled by socially and economically disadvantaged individuals. (ref. 49 CFR Subtitle A (10-188)). In terms of socially disadvantaged, Form 10910 A of Section 8(a) federal program requires the following criteria to be met in order for a business owner to successfully claim to be *socially disadvantaged*:

- (a) An applicant's disadvantage must stem from his or her color, ethnic origin, gender, physical handicap, or long term residence in an environment isolated from the mainstream of American society, or other similar causes not common to small business persons who are not socially disadvantaged.
- (b) An applicant claiming social disadvantage must demonstrate that he or she has personally suffered social disadvantage and not claim membership in a non-designated group which could be considered socially disadvantaged.
- (c) An applicant's social disadvantage must be rooted in the treatment which he or she has experienced in American society, not in other countries.

- (d) An applicant's social disadvantage must be chronic and substantial, not fleeting or insignificant.
- (f) An applicant's social disadvantage must have negatively impacted on his or her entry into and/or advancement in the business world. Particular emphasis will be placed on the differential experiences of the individual related to education, employment, and business.

Second, the definition of an *economically disadvantaged individual* is those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar lines of business and competitive market area who are not socially disadvantaged.

From these definitions, it is quite clear that in order for a business to participate in an economically disadvantaged business program, they must be *both socially and economically disadvantaged*. Therefore, the classification of economically disadvantaged small business (EDB) as assigned in the St. Paul Vendor Outreach Ordinance appears *not* to meet either the intent, spirit, or the letter of federal regulations designed to address unfair discrimination. However, by the City of St. Paul summarily grandfathering in EDBs--or predominately white male-owned businesses--the City intentionally dilutes the resources that should otherwise be used to provide support necessary to provide a level playing field for minority- and women-owned businesses to access government contracts. The St. Paul Vendor Outreach Program shows a clear reluctance to address the disparities that are shown to exist for minority- and women-owned businesses. This reluctance appear to be in direct contradiction to the City's position of being a business-friendly city.

CONCLUSIONS

Unfair discrimination based on race and gender is illegal pursuant to the 1964 Civil Rights Act as amended. The United States Supreme Court has held that public jurisdictions have a compelling interest to address and eliminate unfair discrimination. In addition, the Court has further held that public jurisdictions can institute narrowly fashioned race- and gender-based corrective action remedial programs when faced with the evidence of passive or active discrimination.

The "Multijurisdictional Disparity Study of Minority/Women Business Enterprises Report," prepared by BBC and issued through the Disparity Study Joint Powers Board, concluded at the 95 percent statistical level of confidence, that the city government of St. Paul, Ramsey County government, and St. Paul School District #625 have participated in passive and active unfair discrimination against minority- and women-owned business enterprises (MWBE). In the face of such findings, the three subject jurisdictions have a compelling state interest and duty to institute such remedial corrective action programs necessary to address and eliminate the documented past, present, and future effects of discrimination that are shown to exist.

Finally, given that this study shows that there have been obvious violations of the law, it is the opinion of the writer, that if a jurisdiction chooses not to institute narrowly tailored appropriate remedial corrective action programs, their action stands as a clear demonstration of their willingness to risk operating outside the very laws they are charged with upholding and of their willingness to continue to perpetuate unfair discrimination against minority and women citizens. In view of such, it is furthered recommended that local citizens and community organizations initiate a monitoring strategy designed to assess the effectiveness of the jurisdiction's Post-Croson programs to address discriminatory barriers faced by minority and women businesses in relation to accessing public contracts.

NOTES AND REFERENCES

1. *The Utilization of Minority and Women-Owned Business Enterprises by the City of New York*. Prepared by the Department of Business Services, City of New York, and National Economic Research Associates, Inc., January 1992.
2. *The City's Preference Programs For Minority and Women-Owned Business Enterprises*. Prepared by Browne, Bortz & Coddington, Inc. Phoenix, Arizona, August 1993.
3. *The Maricopa County Minority and Women-Owned Business Enterprise Program Study*. Prepared by Mason Tillman Associates Ltd., August 1991.
4. *Utilization of Minority and Women's Businesses in the Construction and Consulting Fields in King and Pierce Counties*. Prepared by Perkins Coil, Washington Consulting Group and WES Consulting Group. Seattle, Washington, January 1990.
5. *Bonding Needs of New York City's Small, Minority, and Women-Owned Construction Firms*. Prepared by the New York City Department of Business Services. Results of 1991/92 Survey.
6. *City of Cincinnati Croson Study*. Prepared by The Institute for Policy Research, University of Cincinnati, April 17, 1992.
7. Multijurisdictional Disparity Study of Minority/Women Business Enterprises, City of St. Paul, August 1995.
8. Multijurisdictional Disparity Study of Minority/Women Business Enterprises, Ramsey County, August 1995.
9. Multijurisdictional Disparity Study of Minority/Women Business Enterprises, Independent School District #625, August 1995.
10. Transcripts of Proceedings of Public Hearings on Marketplace Discrimination, City of St. Paul, August 1995.
11. Final Report, Public Hearings Regarding Marketplace Discrimination, Institute on Race and Poverty, February 8, 1996.

APPENDIX A

Recommendations adopted by:

Ramsey County City of St. Paul

I. OUTREACH

A. Increase efforts to publicize jurisdictions' programs to potential MWBE firms		
1. Sponsor regular MWBE or small business seminars and trade shows	Yes	No
2. Produce video on how to do business with jurisdictions	Yes	No
3. Set up help line phone number	Yes	No
4. Produce newsletter	Yes	No
5. Direct mass media advertising	Yes	Yes
6. Utilize local plan rooms to distribute rules on bidding opportunities	Yes	Yes
B. Develop more active working relationships with local advocacy groups	Yes	Yes
C. Improve and widen efforts to publicize bidding opportunities		
1. Maintain a bidder list of vendors interested in doing business with jurisdictions	Yes	Yes
2. Advertise bid opportunities in community periodicals with minority and women readership	Yes	Yes
3. Collaborate with other local governments to create regional bid notification program	Yes	No
4. Publicize more widely automated Quest notification system	Yes	No
5. At time of announcement, fax or email interested vendors	Yes	No
6. Create on-line network as regional clearinghouse for MWBE bidders	Yes	No
D. Increase feedback and support for MWBE bidders		
1. Provide feedback to unsuccessful MWBEs	Yes	Yes
2. Contact MWBE firms that did not submit bids--why?	Yes	No
3. Provide support services for successful MWBE bidders	Yes	No
E. Encourage prime contractor outreach to subcontractors		
1. Publish subcontractor directory, assist in marketing expertise	Yes	No
2. Publish minority supplier directory	Yes	No

II. BUSINESS DEVELOPMENT

A. Remedies for lack of experience or skill in critical areas		
1. Provide appropriate referrals and technical assistance	Yes	No
2. Find federal funds that could provide training opportunities	Yes	No
3. Prepare regional consolidated list of community organizations; small business development centers; sources for tax, legal, and accounting assistance	Yes	No
B. Promote equal access to suppliers	Yes	No
C. Fund existing training organizations	Yes	No
D. Increase experience of MWBEs through business partnerships		
1. Establish mentor/protege program	Yes	Yes
2. Utilize on-the-job demonstration projects	Yes	No

III. CONTRACT PROCEDURES

A. Assure sufficient lead times for preparing bids and proposals	Yes	Yes
B. Eliminate unnecessarily restrictive contract specifications	Yes	No
C. Restrict size and scope of contracts	Yes	No
D. Reduce extended length contracts	Yes	No
E. Increase technical assistance	Yes	Yes
F. Equalize access to bonding		
1. Consider bonding in phases	Yes	No
2. Separate cost of bonding from consideration of a low bid.	Yes	No
3. Ramsey County and ISD #625 could copy City's performance bond program for small prime contractors	Yes	Yes
4. Develop ordinances and enforcement processes	Yes	No
5. Develop state legislative initiative to allow government bodies adopting findings from a disparity study the discretion in waiving bond requirements between \$50,000-250,000	Yes	No
6. Extend bonding assistance program to MWBE subcontractors	Yes	Yes

Recommendations adopted by:	Ramsey County	City of St. Paul
G. Equalize access to insurance	Yes	Yes
H. Equalize access to financing		
1. Refer small contractors to sources of financial assistance	Yes	No
2. Participate in programs for small businesses to gain access to financing	Yes	No
3. Fund directly a small business financing program	Yes	No
4. Linked loan program--guarantee 90 percent of loans by certified MWBEs	Yes	No
5. St. Paul Business Resource Center should identify certified MWBEs and provide them with their services	Yes	Yes
6. Linked deposit program	Yes	No
7. Directly invest in MWBEs through purchase of qualified securities as equity investment according to job creation ability of firms	Yes	No
I. Promote equal access to labor	Yes	No
J. Ensure prompt payment to contractors, vendors, and/or subcontractors	Yes	No
K. Ease harassment, predatory business practices, and double standards of performance		
1. Create a climate of fair business practices	Yes	No
2. Minimize practice of predatory bid shopping	Yes	Yes
L. Target goal initiatives	Yes	Yes
M. Pre-invitation to bid steps		
1. Human Rights Department should review contract specifications	Yes	No
2. Human Rights Department should send names of MWBEs to Joint Purchasing Office	Yes	No
N. Review of bidding process	Yes	Yes
O. Increase information about bidding opportunities and bidding process	Yes	No
P. Equalize access to insurance	No	No
Q. Equalize access to supplies	Yes	No
IV. GENERAL ADMINISTRATION, ENFORCEMENT, AND REVIEW OF REMEDIAL POLICIES		
A. Certification of MWBEs	Yes	Yes
B. Enforcement		
1. Discrimination complaints for MWBEs processed through Human Rights Department	Yes	No
2. Non-discrimination complaints for MWBEs processed through existing complaint resolution processes	Yes	No
C. Numerical review		
1. Provide timely data on marketplace utilization and availability	Yes	Yes
2. Develop criteria to judge discrimination and improvements	Yes	No
D. Anecdotal review	Yes	No
E. Improve tracking mechanisms		
1. Design accounts payable system that tracks MWBE payments	Yes	No
2. Track actual payments received by MWBE subcontractors	Yes	No
3. Track use of MWBE subcontractors by construction and professional design firms	Yes	No
F. Graduation and sunset provisions	Yes	Yes
G. Race and gender goal setting and review	Yes	Yes

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